

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

(DIVISION 2)

Pham v Minister for Immigration and Multicultural Affairs [2024]

FedCFamC2G 1444

File number(s):	SYG 1597 of 2020
Judgment of:	JUDGE GIVEN
Date of judgment:	20 December 2024
Catchwords:	MIGRATION – Partner visa – whether Tribunal failed to properly consider social aspects of relationship and nature of household – whether decision of Tribunal legally unreasonable
Legislation:	<i>Migration Act 1958</i> (Cth) ss 5F, 348, 476 <i>Migration Regulations 1994</i> (Cth) cl 801.221 of Schedule 2 <i>Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021</i> (Cth) r 9.03
Cases cited:	<i>Chao v Minister for Immigration and Border Protection</i> [2018] FCA 858 <i>He v Minister for Immigration and Border Protection</i> (2017) 255 FCR 41; [2017] FCAFC 206 <i>Lumanovska v Minister for Immigration and Multicultural and Indigenous Affairs</i> [2003] FCA 1321 <i>Minister for Immigration and Citizenship v Li</i> (2013) 249 CLR 332 <i>NAHI v Minister for Immigration and Multicultural and Indigenous Affairs</i> [2004] FCAFC 10 <i>Young Nam Lee v Minister for Immigration and Multicultural and Indigenous Affairs</i> [2005] FCA 464
Division:	General Federal Law
Number of paragraphs:	60
Date of hearing:	27 November 2024
The Applicant:	In person
Solicitor for the Respondents:	Mr J Pinder, Mills Oakley

ORDERS

SYG 1597 of 2020

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: **THI KIEU TIEN PHAM**
 Applicant

AND: **MINISTER FOR IMMIGRATION AND MULTICULTURAL**
 AFFAIRS
 First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL
Second Respondent

ORDER MADE BY: JUDGE GIVEN

DATE OF ORDER: 20 DECEMBER 2024

THE COURT ORDERS THAT:

1. The application filed on 2 July 2020 is dismissed.

Note: The form of the order is subject to the entry in the Court's records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

REASONS FOR JUDGMENT

JUDGE GIVEN:

1 Before the Court is an application made pursuant to s 476 of the *Migration Act 1958* (Cth) (Act) filed on 2 July 2020, seeking judicial review of a decision of the Administrative Appeals Tribunal (Tribunal) made on 4 June 2020, by which it affirmed a decision of a delegate of the first respondent (delegate) to not grant the applicant a partner (Residence) (Class BS) Subclass 801 visa.

BACKGROUND

2 The following background and summary of the Tribunal's decision is derived from the written submissions of the first respondent and the material available in the Court Book (CB). Unless otherwise indicated, they do not appear to be in dispute.

3 The applicant is a citizen of Vietnam who, on 6 September 2012, made a combined application for each of a Partner (Temporary) (subclass 820) visa (temporary partner visa) and Partner (Residence) (subclass 801) visa (partner residence visa) on the basis of her relationship with her sponsor (CB 1 to 80).

4 On 20 December 2012, a delegate of the Minister granted the applicant the temporary partner visa (CB 81 to 83).

5 On 16 July 2015, the Minister's Department (Department) invited the applicant to comment on adverse information received from the Department of Human Services indicating that the applicant's sponsor had been recorded as 'single' since his birth on 25 October 1979 (CB 374 to 378).

6 On 11 August 2015, the applicant (by her representative) responded to the invitation to comment and provided additional documents to the Tribunal (CB 379 to 440).

7 On 16 October 2015, a delegate of the first respondent refused to grant the applicant the partner residence visa (CB 441 to 464). The delegate was not satisfied that the applicant was the spouse of the sponsor at the time of the delegate's decision, as required by subclause 801.221(2) of Schedule 2 to the *Migration Regulations 1994* (Cth) (Regulations).

8 On 29 October 2015, the applicant applied to the Tribunal for review of the delegate's decision (CB 474 to 475).

- 9 On 21 November 2016, each of the applicant, the sponsor, the sponsor’s mother and a mutual friend of the applicant and sponsor appeared at a hearing before the Tribunal to give evidence (CB 492 to 494).
- 10 On 20 June 2017, the Tribunal affirmed the decision not to grant the applicant the partner residence visa on the same basis as had the delegate (CB 631 to 642).
- 11 On 19 August 2019, the (then) Federal Circuit Court of Australia made orders by consent remitting the matter to the Tribunal on the basis that the Tribunal had made a jurisdictional error of the kind identified in *Singh v Minister for Home Affairs* (2019) 267 FCR 200 (***Singh***) at [34] per Reeves, O’Callaghan and Thawley JJ. Namely, that the Tribunal had made broad and unexplained findings in relation to the evidence of corroborative witnesses without giving proper, genuine and realistic consideration to their evidence (CB 643 to 644).
- 12 On 27 February 2020, the applicant was invited to attend a hearing before the (differently constituted) Tribunal on 17 March 2020 (CB 656 to 660).
- 13 On 17 March 2020, the applicant attended the scheduled hearing to give evidence and present arguments. The Tribunal also took evidence from five witnesses being the sponsor, the applicant’s mother and sister in-law, and two friends of the applicant and sponsor (CB 1147 to 1150).

The Tribunal’s decision

- 14 On 4 June 2020, the Tribunal affirmed the decision not to grant the applicant a partner residence visa. The Tribunal found that the applicant did not satisfy clause 801.221 of the Regulations because she and the sponsor were not in a genuine and continuing relationship (CB 1244 to 1263).
- 15 The Tribunal set out the background to the application (CB 1249 at [9] to [10]). It identified that the issue on the review was whether the applicant and sponsor were in a genuine relationship (CB 1249 at [13]).

Nature of the persons’ commitment to each other

- 16 The Tribunal first considered the nature of the applicant’s commitment to the sponsor, summarised the evidence provided by the applicant in relation to this consideration, including the oral evidence given at the second Tribunal hearing by the applicant and sponsor (CB 1249 to 1250 at [17] to [35]).

- 17 The Tribunal was prepared to accept that the sponsor had been raised with traditional Vietnamese cultural values and that he was not proud of the fact that he was not the main income earner. The Tribunal was also prepared to accept that the sponsor was reluctant to discuss his worries with the applicant because he did not want to make her worried or stressed. The Tribunal had regard to the fact that the couple had been married since 2012, and found it to be ‘far-fetched’ that the concerns of the parties had not surfaced in discussions between them prior to the hearing (CB 1252 to 1253 at [37]). The Tribunal found the applicant’s claim that the sponsor did not speak about financial issues at the hearing because he did not wish to stress her about money to be a contrivance (CB 1253 at [38]). The Tribunal considered it reasonable to expect that, given the previous Tribunal decision to affirm the delegate’s refusal, each of the applicant and sponsor would provide open, forthcoming and honest responses to achieve a positive outcome (CB 1253 at [38]).
- 18 The Tribunal considered the couple’s claimed desire to have children but identified concerns with some of the oral evidence provided regarding their intention to have children. The Tribunal found that if the couple was genuinely interested in having children, the claim that the applicant was “*too busy*” to ascertain why she was not falling pregnant appeared inconsistent with that desire (CB 1253 at [39]). The Tribunal also noted that the sponsor’s explanation as to why they had not had children differed from that put forward by the applicant and “*raised further concerns*” (CB 1253 at [40]).
- 19 In respect of a medical certificate dated 7 December 2016 which indicated that the applicant attended her doctor on 19 August 2014 to have tests “*in preparation for pregnancy*” (CB 1254 at [45]), the Tribunal considered that this raised significant doubts about the applicant’s credibility given her claims she wanted to have a child in 2014 because it was the year of the horse in the Chinese Zodiac. The Tribunal found that any attempt to have a child in the 2014 calendar year would have required the couple to attempt conception well in advance of August 2014 (CB 1254 at [46]). Given the Tribunal’s adverse credibility findings, it did not accept the remaining claims made by the couple in relation to the conflicting evidence regarding their desire to have children, if and when they used contraception, and other related factors (CB 1254 at [46]).
- 20 The Tribunal accepted the couple met at a wedding and that they had been married since 2012. However, the Tribunal found that the evidence regarding the degree of companionship and emotional support drawn from one another, to not be strong. The Tribunal found it

troubling that the couple gave different responses regarding the areas of tension arising between them, and did not accept their explanations as to why they provided such different perspectives on what caused tension in their relationship (CB 1254 at [47]). Overall, the Tribunal was not satisfied that the evidence put forward supported a finding that the couple had a genuine commitment to a long-term relationship together (CB 1254 at [48]).

Financial aspects

21 The Tribunal summarised the evidence about the financial aspects of the relationship (CB 1254 to 1256 at [50] to [58]). The Tribunal accepted that the couple had joint bank accounts for several years, and that the smart access account statements were broadly reflective of the claims made. However, the Tribunal found that the funds in the account used to pay for their portion of the household expenses and other expenses derived entirely from the visa applicant's salary, and that this had been the case for many years. The Tribunal found there was no evidence that the sponsor contributed financially to the relationship and that the declarations provided indicated that he had done so on a limited basis in the past. The Tribunal also had regard to the business cash flow and found that it had been very small since it was established (CB 1256 at [59]). The Tribunal found that the couple did not own any major assets, and no evidence was provided in relation to any significant liabilities (CB 1256 at [60]). Furthermore, the couple's Netbank Saver account, aside from small amounts of interest credited, had only one deposit between 1 February 2018 and 1 January 2020. The previous period for which a statement was provided was for 8 January until 7 July 2016, and in that period the account balance increased by \$911. Accordingly, the Tribunal found there was no pattern of regular saving and the records did not demonstrate the claims made that they were saving to buy a house (CB 1256 at [60]). The Tribunal was not satisfied that the evidence provided supported a finding that the financial aspects of the parties' relationship was consistent with a spousal relationship (CB 1256 at [60]).

Social aspects

22 The Tribunal found that the photographs provided by the applicant indicated that the couple attended events and undertook activities together (CB 1256 at [64]). It found that the Form 888 declarations from the sponsor's family and friends attested to the genuineness of the relationship but provided little insight into the relationship (CB 1256 at [65]). The Tribunal considered the translated statements from the applicant's parents and gave these statements 'no weight' on the basis that they were written in exactly the same terms and therefore

indicated they were prepared by a third person on behalf of the parents (CB 1256 at [66]). The Tribunal considered the oral evidence provided by the applicant's family and friends at the Tribunal hearing (CB 1257 at [68] to [73]) and accepted that the couple's relatives and friends believed them to be in a genuine relationship. However, the Tribunal found that simply because the friends believed this to be the case was not determinative of that fact (CB 1258 at [74]). The Tribunal accepted that the couple undertook activities together and that they did not have busy social lives because the sponsor has a quiet personality. However, the Tribunal found that overall, the evidence did not convince the Tribunal as to the social aspects of the relationship (CB 1258 at [74]).

Nature of the household

23 The Tribunal set out a detailed summary of the applicant's evidence (CB 1258 to 1260 at [75] to [89]). The Tribunal found that the sponsor's evidence in relation to their daily routines was inconsistent with that of the applicant (CB 1260 at [90]). The Tribunal found the sponsor's explanation that he did not know about the applicant's daily routines because he was not interested in hearing about her workday as a hotel housekeeper, did not remedy its concern (CB 1260 at [90]). The Tribunal found the applicant and sponsor's explanations did not explain why one did not know about the other's daily routine, even though they had been together since 2012 (CB 1260 at [90]). The Tribunal found that this suggested the applicant and sponsor may live in the same household, but they were not in a genuine and committed spousal relationship (CB 1260 at [91]). The Tribunal found there were no children of the relationship, although the sponsor had a teenage daughter (CB 1260 to 1261 at [92]). The Tribunal observed that the applicant did not know what school the sponsor's daughter attended and that she gave inconsistent evidence as to how often the sponsor saw his daughter (CB 1260 to 1261 at [92] to [93]). The Tribunal considered that this inconsistent evidence raised credibility concerns regarding the applicant and further doubts about the nature of the relationship between the applicant and sponsor (CB 1261 at [99]).

24 The Tribunal set out a summary of the applicant's post-hearing submissions (CB 1262 at [106]). It also found that a non-disclosure certificate on the file was not valid and had no regard to it (CB 1262 to 1263 at [107] to [109]).

25 In summary, the Tribunal found that because of the inconsistencies in the evidence provided it was unable to be satisfied that the applicant and sponsor considered the relationship was genuine or that they had a long-term commitment to each other (CB 1262 at [109]). The

Tribunal acknowledged a substantial amount of documentary evidence had been provided but was cognisant that even if a relationship is not genuine, corroborative written evidence could be presented, and did not consider that the documentary evidence was dispositive of the issue at hand (CB 1263 at [110]). The Tribunal considered the entirety of the evidence and found that the applicant and sponsor were known to each other, were part of an extended family, and lived in the same household. The Tribunal was not satisfied as to the financial aspects of the relationship, and found the social aspects were “not convincing”. Furthermore, the Tribunal noted that it had credibility concerns in relation to some aspects of the evidence and claims submitted (CB 1263 at [111]). Having considered all the evidence, the Tribunal was not satisfied that the parties had a mutual commitment to a shared life to the exclusion of all others and they are in a genuine and continuing relationship (CB 1263 at [112]). On this basis, the Tribunal affirmed the decision under review (CB 1263 at [113] to [114]).

APPLICATION TO THE COURT

- 26 As noted above, these proceedings were commenced by an application to show cause filed for on 2 July 2020. The applicant was represented by a solicitor at the time the proceedings were commenced. The proceedings were initially placed in the Court’s central migration docket to await allocation to a Judge.
- 27 On 6 August 2020, a Registrar of the Court made orders for the preparation of the matter for a final hearing, on a date yet to be fixed. By those same orders the applicant was granted leave to file an amended application. The applicant did not avail herself of that grant of leave, presumably because she was represented and her solicitors had prepared the originating application.
- 28 The proceedings remained in the central migration docket until when, on 9 September 2024, they were docketed to me. I made orders on that date listing the matter for final hearing before me on 27 November 2024, together with a timetable for the preparation of the matter in advance of that hearing (**November Orders**). Among the November Orders was a further grant of leave to the applicant to file and serve an amended application. The applicant again did not avail herself of that opportunity.
- 29 On 28 October 2024, the applicant’s solicitor filed a Notice of Withdrawal of Lawyer, having duly first served the applicant with notice of their intention to withdraw in accordance with r 9.03(3) of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth) (**Rules**).

30 In accordance with the November Orders, the first respondent filed written submissions on 12 November 2024 and an Affidavit of Service 2 days before the final hearing. No written submissions (or any further documents) were filed by or for, the applicant in the time provided, or at all.

31 On 27 November 2024, the parties appeared before me for hearing in-person. In circumstances where the applicant was no longer legally represented, the Court arranged for an interpreter in the Vietnamese language to be present at hearing to assist the applicant. Shortly prior to the commencement of the hearing at 2:15pm, the Court was notified that the interpreter who had been booked was experiencing difficulty with public transport and would be unable to attend Court until after 3:00pm. In those circumstances, at my direction, my Associate provided a Microsoft Teams link to the interpreter, so she could instead attend by videolink so as not to delay the hearing. With one brief exception, the connection to the Microsoft Teams forum appeared clear throughout and the interpreter and the applicant did not appear to have any difficulty in understanding one another, nor the Court. At or about 3:00pm the interpreter's screen froze momentarily. The Court adjourned for approximately 2 minutes, during which the interpreter re-connected to the Microsoft Teams forum and the hearing resumed and proceeded without any further difficulty.

GROUND OF REVIEW

32 In circumstances where the applicant has not availed herself of the opportunities to amend, the grounds of review which arise for consideration are those contained in the originating application, which are as follows (particulars omitted):

1. In deciding to affirm the decision of the First Respondent, the Second Respondent (the Tribunal) committed an error of law going to jurisdiction.
2. In deciding to affirm the decision of the First Respondent, the Second Respondent (the Tribunal) committed an error of law amounting to a jurisdictional error by failing to carry out its statutory function as required by s 348 of the Act.
3. In deciding to affirm the decision of the First Respondent, the Second Respondent (the Tribunal) committed an error of law amounting to a jurisdictional error by making findings that were legally unreasonable.

Grounds 1 and 2

33 In circumstances where grounds 1 and 2 are respectively different expressions of the same complaint, the first respondent addressed them together by written submissions. It is convenient to do the same for the purposes of these reasons for judgment.

- 34 In respect of the first ground, the applicant claims that in determining whether she satisfied cl 801.211 of Schedule 2 to the Regulations, the Tribunal failed to comply with its obligations under s 5F of the Act. Specifically, particular (a) to ground 1 states that the Tribunal failed to consider in an active and intelligible way, the social aspects of the relationship, particularly the opinion of the applicant's friends and acquaintances about the nature of the relationship, in its assessment of the genuineness of the applicant's relationship with the sponsor, as required by reg 1.15A(3)(c)(ii) of the Regulations.
- 35 In the alternative, particular (c) to ground 1 contends that the Tribunal failed to consider at all or sufficiently, the requirements under reg 1.15A(3)(d) pertaining to the nature of the household of the applicant and the sponsor.
- 36 In relation to ground 2, the applicant alleges that the Tribunal failed to carry out its statutory function as required by s 348 of the Act and relies on the particulars to ground 1.
- 37 Each of grounds 1 and 2 was interpreted to the applicant at hearing and she was given the opportunity to address them.
- 38 In respect of ground 1, the applicant was invited to tell the Court in what manner she alleges the Tribunal failed to properly consider the opinions of her friends and acquaintances in respect of her relationship with the sponsor. The Court expressed to the applicant an appreciation for the fact that she was not the author of the application, it having been drafted by her former solicitor, but invited her to explain in her own words what she contends the error is.
- 39 The applicant made submissions to the effect that if she were not in a genuine relationship with the sponsor, their friends would not have taken the time to attend the Tribunal to give evidence.
- 40 In respect of the second particular to ground 1, the applicant confirmed that her complaint in this regard was the same as the other aspect of ground 1. Namely, the applicant takes issue with the fact that the Tribunal did not accept the evidence advanced. In essence, the applicant says that evidence rejecting the evidence of third parties means the Tribunal failed to consider it.
- 41 When asked to address ground 2, the applicant said she had no submissions to make.

- 42 The first respondent says that that neither formulation of the complaints in grounds 1 and 2 discloses any error on the Tribunal’s part, and points to various parts of its decision which indicate that it not only considered the evidence provided by the applicant’s family, friends and co-workers, but accepted that the evidence revealed those individuals genuinely believed the applicant to be in a spousal relationship with the sponsor. The Tribunal however, ultimately found that that aforementioned belief did “*not necessarily make it so*”. The first respondent says that, given the Tribunal’s acceptance of the evidence provided at [74] of its decision, there is no basis for the applicant’s contention that the Tribunal failed to engage with the opinions presented.
- 43 The first respondent says further, that the Tribunal was entitled to engage in a balancing exercise of the witness evidence, weighing it against its findings in relation to the other considerations under sub-regulation 1.15A(3) of the Regulations: *Young Nam Lee v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCA 464 (Lee) at [14] to [16] per French J citing in turn *Lumanovska v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCA 1321 at [17] per Gray J and *Chao v Minister for Immigration and Border Protection* [2018] FCA 858 at [32] per Allsop CJ. The first respondent submitted that the Tribunal’s finding was plainly open to it on material provided and was reasonable in relation to reg 1.15A(3)(c)(ii). I agree that it was.
- 44 The second limb of ground 2 speaks to an alleged failure of the Tribunal to consider (or consider sufficiently) several matters such as the duration of the relationship, the length of time the couple had lived together, degree of companionship and emotional support, and whether the other person saw the relationship as a long-term one. Out of an abundance of caution, the first respondent also addressed whether the particulars to ground one might be taken to allege an error of the type identified in *He v Minister for Immigration and Border Protection* (2017) 255 FCR 41 (*He*).
- 45 However, I agree with the ultimate submission made for the first respondent that while the Tribunal’s decision does not expressly address its obligations in relation to reg 1.15A, the reasons for decision do reflect the language of reg 1.15A(3) and are structured in a manner which directly addresses the considerations prescribed by that provision.
- 46 A plain reading of the Tribunal’s reasons for decision reflects that the Tribunal was aware of the matters prescribed by reg 1.15A(3) as being “*in effect...questions*” which must be

answered: *Cf He (supra)* at [76] per Siopis, Kerr and Rangiah JJ. I accept that the Tribunal in the present case did make dispositive findings in respect of those questions.

47 In respect of the submissions made by the applicant at hearing, I accept the submission of the first respondent that the opinion of friends and acquaintances of the applicant and sponsor about the nature of the relationship is but one of four elements that the Tribunal was required to consider under reg 1.15A(3). I accept that the Tribunal considered and accepted the evidence put forward by the applicants in respect of the social aspects of the relationship but that, when combined with the multiple other factors in the sub-regulation, the Tribunal overall was not satisfied as to the genuineness of the relationship. I agree with the submission of the first respondent that this conclusion was open to the Tribunal on the evidence before it and for the reasons that it gave.

Ground 3

48 Ground 3 alleges the Tribunal made findings which were legally unreasonable.

49 Particular (a) to the ground takes issue with the Tribunal's preparedness to accept that the evidence provided by the witnesses indicated a belief on their part, that the applicant and sponsor are in a genuine and committed relationship, and its subsequent finding that the fact of that belief "*does not necessarily make it so*".

50 Particular (b) to the ground contends that in finding that the applicant and sponsor did not satisfy the financial aspects of the relationship because there was no evidence that the sponsor contributed financially to the relationship and had done so on a limited basis in the past, fails to consider common spousal relationships with a "*single breadwinner*" and was therefore legally unreasonable.

51 This ground was interpreted to the applicant at hearing, and she was invited to make submissions in respect of which she stated that her friends had known she and the sponsor for a "*long, long time*".¹ The applicant again questioned the weight given by the Tribunal to the evidence of the witnesses in respect of the social aspects of the relationship and the Tribunal's alleged disbelief of the witnesses. The Court spent some time explaining the finding of the Tribunal was that it accepted the witnesses genuinely believed that the couple were in a genuine relationship, but that this did not establish the fact in and of itself.

¹ Transcript dated 27 November 2024 at T12.25

52 In respect of the aspect of ground 3 which went to the financial aspects of the relationship, the applicant made submissions to the effect that the sponsor had less stable employment than she, that he:²

does on-call job, and that he actually gets paid by cash. And we use that cash to pay for the expenses. And that's why, you know, there wasn't any money deposited into the account.

53 The applicant made submissions that the sponsor does not deposit money into their account and that this "*is a very normal thing that happen in our Asian family.*" The applicant went on to make submissions that:³

...we do not have any debts at all. I actually can see the other couples because of facing difficulty in finance. They actually, you know, borrow the money from the bank or, you know, take out the debt and all that. We are better. We're actually not having any loan or any debt at all.

54 The matters addressed by the applicant at hearing in respect of ground 3 can be summarised as seeking to engage the Court in merits review which, as was explained to the applicant several times at hearing, is no part of the Court's jurisdiction. It was reasonably open for the Tribunal to take into account the sponsor's lack of financial contribution in assessing the financial aspects of the couple's relationship (CB 1256 at [61]). That the applicant now wishes to give additional evidence to the Court, to counter the Tribunal's finding, is impermissible.

55 In terms of the applicant's complaint about the weight to be given to evidence, that is a matter for the Tribunal as part of its fact-finding function: see *NAHI v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCAFC 10 at [11] per Gray, Tamberlin and Lander JJ.

56 The first respondent submitted that it was reasonably open to the Tribunal to find that the opinions of the applicant's family and friends were not solely determinative of whether the applicant and sponsor were in a genuine and committed relationship.

57 I accept the first respondent's submission that the Tribunal was not obliged to take into account that spousal relationships with a "single breadwinner" were common, and that its finding that the couple did not satisfy the financial aspects of the relationship was made on multiple bases set out in the mandatory considerations under reg 1.15A(3)(a), rather than solely the Tribunal's finding that the sponsor did not contribute financially to the relationship.

² Transcript dated 27 November 2024 at T13.31 to 13.34

³ Transcript dated 27 November 2024 at T13.43 to T13.46

To the extent that the first respondent submits in respect of ground 3 that the Tribunal's findings clearly had an evident and intelligible justification and were open on the material before the Tribunal, I agree: see *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at [76] per Hayne, Kiefel and Bell JJ.

58 There is nothing arising from the applicant's submissions nor from an independent review of the Tribunal's decision which would cause the Court to conclude that the decision of the Tribunal was legally unreasonable. Accordingly, ground 3 is not made out.

CONCLUSION

59 The decision of the Tribunal is not affected by legal error as alleged, or at all. Accordingly, it is a privative clause decision and the application must be dismissed. I will so order.

60 I will hear the parties as to costs.

I certify that the preceding sixty (60) numbered paragraphs are a true copy of the Reasons for Judgment of Judge Given.

Associate:

Dated: 20 December 2024